IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of DOUGLAS RICHARD BLOME,	)	No. 64284-7-I
Respondent and Cross Appellant,	)	DIVISION ONE
and	)	UNPUBLISHED OPINION
DIANA MAE BLOME,	)	
Appellant and Cross Respondent.	)	FILED: July 26, 2010

Appelwick, J. — Diana Blome appeals the parenting plan modification regarding her son. The trial court applied the "minor modification" provisions of RCW 26.260(5)(c). She argues that a more comprehensive review was required under In re Marriage of Adler, 131 Wn. App. 717, 724–26, 129 P.3d 293 (2006), and In re Marriage of Possinger, 105 Wn. App. 326, 337, 19 P.3d 1109 (2001). Douglas Blome cross-appeals, arguing the trial court erred by ordering that Diana[1] and Douglas share joint decision-making authority. We affirm.

FACTS

In January 2007, the trial court modified an existing permanent parenting plan, reducing Diana's residential time with her son and limiting her decision-

[1] We refer to the Blomes by their first names to avoid confusion. No disrespect is intended.

making authority. The court found that Diana had long-term emotional or physical impairment which interfered with her parenting and engaged in abusive use of conflict. Accordingly, the court imposed limitations pursuant to RCW 26.09.191(3)(b) and .191(3)(e).[2]

Paragraph 7.2(19) of the 2007 order provided:

> The mother should have opportunity to demonstrate a substantial change in circumstances specifically related to the basis for limitation, to have these substantial changes corroborated by data independent of the mother or father, and to move for increased custodial time and or the removal of reductions or restrictions on her visitation with the child based on those substantial changes. Possible avenues toward the documentation of these substantial changes might be proof of completion of a Washington State certified outpatient chemical dependency program, proofs of regular participation in AA [Alcoholics Anonymous], NA [Narcotics Anonymous], or other 12 Step Programs, letters from counselor, psychologist, or psychiatrist documenting her improvement, attestation from a 12 step sponsor as to her commitment to abstinence and recovery, completion of parenting classes.

In July 2008, Diana petitioned to modify the 2007 parenting plan. She sought reinstatement of the August 20, 2002 parenting plan as modified on

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[2] RCW 26.09.191(3) provides, in pertinent part:

> A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:
>
> . . .
>
> (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
>
> . . .
>
> (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

August 9, 2004, based on a "substantial change of circumstances as defined in paragraph 7.2(19) of the January 30, 2007 parenting plan." Reinstatement of the original parenting plan would have been the equivalent of a major modification to the 2007 plan. See RCW 26.09.260(5).

It is not disputed that Diana demonstrated the substantial change required to remove the limitations imposed in the 2007 order. The court found that Diana demonstrated a substantial change in circumstances related to the limitations based on long term emotional or physical impairment and abusive use of conflict.

The trial court held that the 2007 order only entitled Diana to a minor modification of the residential schedule pursuant to RCW 26.09.260(5)(c), rather than a more expansive review she sought. Accordingly, the trial court ordered a gradual increase in Diana's residential time over a period of 18 months, to be monitored and evaluated by a guardian ad litem (GAL). The trial court also granted Diana joint decision-making authority with Douglas, the child's father. Specifically, the trial court ordered that all education decisions and non-emergency, non-routine health care decisions would be made jointly.

ANALYSIS

We review a trial court's final parenting plan for an abuse of discretion. In re Marriage of Cabalquinto, 100 Wn.2d 325, 327, 669 P.2d 886 (1983). A trial court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 46–47, 940 P.2d 136 (1997).

I. Diana's Appeal

Diana appeals the trial court's decision to order a minor modification, rather than a more expansive review under the provisions of RCW 26.09.187,[3] as in Potter v. Potter, 46 Wn.2d 526, 528, 282 P.2d 1052 (1955), Adler, 131 Wn. App. at 724–26, and Possinger, 105 Wn. App. at 337. However, those cases all involved review of initial parenting plans under the express terms of those plans and not modifications of existing permanent parenting plans pursuant to a motion to modify under RCW 26.09.260.[4] Potter, 46 Wn.2d at 527; Adler, 131 Wn. App. at 722; Possinger, 105 Wn. App. at 331. By contrast, the order on appeal in this case is a modification, and the provisions of RCW 26.09.187 are inapplicable. Potter, Adler, and Possinger do not apply here.

A trial court's authority to modify an existing parenting plan is severely restricted by statute. Modifications of parenting plans are governed by RCW 26.09.260 and .270. Where, as here, the basis for the modification was a substantial change in Diana's circumstances, the only modification the statute permits is a "minor modification."[5] RCW 26.09.260(5). The "minor modification" provisions of RCW 26.09.260(5) allow the trial court to order adjustments to the

[3] RCW 26.09.187 sets forth the criteria for establishing an initial permanent parenting plan.

[4] The initial parenting plan in Adler specified that the subsequent review would apply the more restrictive criteria of RCW 26.09.260 without a showing of substantial change of circumstances. Adler, 131 Wn. App. at 725.

[5] RCWA 26.09.260(1) states that the court shall not modify a parenting plan unless it finds that a substantial change has occurred in the circumstances of the child or the nonmoving party. However the court may order a minor modification upon a showing of a substantial change in circumstances of either parent or of the child. RCW 26.09.260(5).

residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, if the proposed modification is only a "minor modification." A "minor modification" in the residential schedule is one that that does not change the residence the child is scheduled to reside in the majority of the time and:

> (a) Does not exceed twenty-four full days in a calendar year; or
>
> (b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or
>
> (c) Does not result in a schedule that exceeds ninety overnights per year in total [if other conditions are met].

RCW 26.09.260(5). The trial court's decision to apply the "minor modification" standards in this case is entirely consistent with the statutory requirements.

Diana also asserts that she was entitled to "reinstatement of the August 20, 2002 parenting plan as modified on August 9, 2004." In essence she wants the 2007 plan to be deemed temporary, or to be vacated. However, the 2007 parenting plan did not expressly indicate that it was temporary, and there is no evidence the trial court intended it to be a temporary order. The order did not provide a specific timeline for review, or any terms of the review process. In addition, Diana has established no basis on which the 2007 order could be vacated.

Accordingly, the 2007 parenting plan could only be modified as provided by statute. This is exactly what the trial court did. We find no abuse of

discretion.

II. Douglas's Cross-Appeal

Douglas argues for the first time on cross-appeal that the trial court erred by extending Diana's decision-making authority.

The 2007 parenting plan gave Douglas sole decision-making authority based on: (1) The existence of a limitation under RCW 26.09.191; (2) each parent's history of participation in decision-making; (3) the parents' ability and desire to cooperate with one another in decision-making; and (4) the parents' geographic proximity to one another.

In ordering joint decision making, the 2010 parenting plan only mentioned one of these four factors, the removal of the limitations under RCW 26.09.191. In its conclusions of law, the trial court adopted the GAL's recommendations, absent a series of enumerated modifications, not pertaining to joint decision-making.

Douglas argues that the trial court's findings did not state any basis for restoring joint decision making. We disagree. The trial court entered extensive findings of fact regarding Diana's substantial change of circumstances, findings which plainly supported removing the limitations imposed in 2007. Douglas does not assign error to the findings, and they are verities on appeal. In re Interest of Mahaney, 146 Wn.2d 878, 895, 51 P.3d 776 (2002). These findings expressly stated that Diana has no emotional or physical impairments to functioning as a parent, is not engaging in abusive use of conflict, is not using illegal drugs, and was able to perform all appropriate parenting functions. These

findings support the order of joint decision-making.

Douglas also claims the trial court's findings of fact do not support its conclusions of law and order, because the trial court did not "strike out" the GAL's recommendation that Douglas retain sole decision-making authority. However, the trial court's explicit language in removing the restrictions and granting Diana decision-making authority clarify its intention and reveal that the trial court was not relying on the GAL's recommendation regarding decision-making authority.[6]

Finally, Douglas claims the trial court erred by failing to make findings regarding application of each relevant statutory factor in modifying a prior parenting plan, citing In re Marriage of Shryock, 76 Wn. App. 848, 852, 888 P.2d 750 (1995). Shryock is inapposite, as it involved a trial court expressly finding no that no statutory reasons for modification applied, but nevertheless modified the parenting plan in two significant ways. Id. Here, by contrast, the trial court's findings adequately support the modification. There was no error.

III. Attorney Fees

Douglas requests attorney fees under RCW 26.09.140, citing In re Marriage of Johnson, 107 Wn. App. 500, 505, 27 P.3d 654 (2001). Because we deny relief to both parties, we decline Douglas's request.

[6] Furthermore, although Douglas now claims the trial court's conclusion is contrary to the findings of fact, he apparently did not raise the issue when the findings and conclusions were entered or move for reconsideration or clarification. At that point in time, the trial court could have clarified the extent of its reliance on the GAL's recommendations. Douglas's failure to raise the issue supports the conclusion that the parties were not confused about what the trial court intended.

Affirmed.

Appelwick, J.

WE CONCUR:

Edlington, J.

Cox, J.